

REMARKS

This is intended as a full and complete response to the Office Action dated February 23, 2006, having a shortened statutory period for response set to expire on May 23, 2006. Claims 1-13 and 32-37 have been examined. The Examiner rejected claims 1-13 and 32 under 35 U.S.C. § 102(e) as being anticipated by McDermott, III, et al. (US Patent No. 6,894,970). The Examiner rejected claims 1-6, 8, 11, 13, and 32 under 35 U.S.C. § 103(a) as being obvious over Chiu, et al. (US Patent Application Publication No. 2002/0063916 A1). The Examiner rejected claims 7, 9, 10, and 12 under 35 U.S.C. § 103(a) as being obvious over Chiu, et al. in view of Fatehi, et al. (US Patent No. 6,600,581). Additionally, the Examiner indicated that claims 33-37 are allowed.

Claim Rejections Under 35 U.S.C. § 102(e)

The Examiner rejected claims 1, 8, and 32 as being anticipated by McDermott, III, et al. In response, Applicant has amended claims 1, 8, and 32.

As amended, claims 1 and 32 include the limitation of an optical sampling element having an optical to electrical converter element and a framer element, wherein the optical sampling element produces a sample indicative of an optical error signal. As amended, claim 8 includes the limitations of (i) sampling a portion of said optical signal to determine an error in said routers, (ii) converting said sampled optical signal to an electrical signal and (iii) framing the electrical signal, whereby said framed electrical signal is used to control the sending of the plurality of channels. McDermott, III, et al. does not disclose these limitations. Rather, McDermott, III, et al. merely discloses a packet forwarding module "13-0" (referred to by the Examiner as an optical sampling element), whereby the packet forwarding module is configured to receive two simultaneous chunks from a fabric and then to analyze the chunks and discard one of them. (See McDermott, III, et al., col. 2, lines 25-45) Further, McDermott, III, et al. discloses a line control processor "307" (also referred to by the Examiner as an optical sampling element), whereby the line control processor is configured to control a facility protection switching function. (See McDermott, III, et al., col. 9, lines 47-54) There is simply no mention in McDermott, III, et al. that the packet forwarding module "13-0" or the line control processor "307" is configured to utilize an optical to electrical converter element and/or a framer element. For this reason, McDermott, III, et al. fails to teach or disclose all the limitations of claims 1, 8,

and 32. This failure precludes McDermott, III, et al. from anticipating claims 1, 8, and 32. Therefore, Applicant respectfully requests the 102(e) rejection of claims 1, 8, and 32 be removed and allowance of the same. Additionally, since claims 2-7 depend from claim 1 and claims 9, 10, 12, and 13, and new claim 38 depends from claim 8, these claims are allowable for at least the same reasons as claims 1 and 8.

Claim Rejections Under 35 U.S.C. § 103(a)

The Examiner rejected claims 1, 8, and 32 as being obvious over Chiu, et al. The Examiner states that Chiu, et al. discloses an optical cross-connect (OXC) that detects a failure in a router and then coordinates the setup of a new lightpath link between the routers. According to the Examiner, it would have been obvious to a person of ordinary skill in the art to configure the OXC disclosed in Chiu, et al. to sample a portion of the optical signal in order to detect the failure in the router. Applicant respectfully traverses the rejection because the Examiner has failed to establish a *prima facie* case of obviousness.

According to MPEP 2143.03, to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). As admitted by the Examiner, Chiu, et al. does not disclose a switching part that includes a control mechanism or an optical sampling element configured to sample signals and produce a sample indicative of a fault signal which is used by the control mechanism to control the switching. Further, there is no suggestion in Chiu, et al. that the OXC samples a signal in the router or even that the OXC is capable of sampling a signal in the router to determine a failure. In fact, Chiu, et al. states that a router failure may be detected by another router, which indicates that OXC does not sample any type of signal in the router. (See Chiu, et al., paragraph 0045) Moreover, Chiu, et al. does not disclose or suggest an optical sampling element having an optical to electrical converter element and a framer element as recited in amended claims 1, 8, and 32.

As the foregoing illustrates, Chiu, et al. fails to teach or suggest all the limitations of claims 1, 8, and 32. Therefore, Chiu, et al. cannot render claims 1, 8, and 32 obvious. Applicant therefore submits that claims 1, 8, and 32 are in condition for allowance and respectfully requests withdrawal of the § 103(a) rejection. Additionally, since claims 2-6 depend from claim 1 and

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claim 13 and new claim 38 depend from claim 8, these claims are allowable for at least the same reasons as claims 1 and 8.

The Examiner rejected claims 7, 9, 10, and 12 as being obvious over Chiu, et al. in view of Fatehi, et al. Applicant respectfully traverses the rejection. As set forth above, Chiu, et al. fails to render claims 1 and 8 obvious. Fatehi, et al. fails to cure the deficiencies of Chiu, et al. This failure precludes the combination of Chiu, et al. and Fatehi, et al. from rendering claims 7, 9, 10, and 12 obvious. For these reasons, Applicant submits that claims 7, 9, 10, and 12 are in condition for allowance and respectfully requests withdrawal of the § 103(a) rejection.

Allowable Subject Matter

The Examiner indicated that claims 33-37 are allowed. Applicant appreciates the allowance of these claims.

Conclusion

Having addressed all issues set out in the office action, Applicant respectfully submits that the case is in condition for allowance. If the Examiner has any questions, please contact the Applicants' undersigned representative at the number provided below.

Respectfully submitted,



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